

## Chapter 14A

### HISTORIC PRESERVATION<sup>1</sup>

#### Sec. 14A-1. Purpose and intent.

The intent of this chapter is to provide protection for significant properties and archeological sites which represent important aspects of Tempe's heritage; to enhance the character of the community by taking such properties and sites into account during development, and to assist owners in the preservation and restoration of their properties. Reasonable and fair regulations are included in this chapter as a means of balancing the rights of property owners and the value to the community of these significant properties and sites. The designation of any property or district shall not inhibit uses as permitted by the Zoning and Development Code, as adopted and amended by the city council.

(Ord. No. 95.35, 11-9-95; Ord. No. 2004.42, 1-20-05)

#### Sec. 14A-2. Definitions.

The language of the definitions in this chapter shall be interpreted so as to convey the same meaning as in common usage, thereby giving this chapter its most reasonable application.

*Alteration* means any aesthetic, architectural, mechanical or structural change to the exterior surface of any significant part of a designated property.

*Archeologically sensitive* means a property which includes known or suspected archeological sites.

*Archeological site* means a site that has yielded, or exhibits the promise of yielding, information important in the understanding of human prehistory or history. Such information may consist of evidence of past human life, habitation or activity, as well as material remains.

*Arizona register of historic places*<sup>2</sup> means the list of Arizona's historic properties worthy of preservation which serves as an official record of Arizona's historic districts, archeological sites, buildings, structures and objects significant in this state's history, architecture, archeology, engineering and culture. Pursuant to A.R.S. § 41-511.04(9), the Arizona state parks board, state historic preservation office is authorized to keep and administer an Arizona register of historic places composed of properties which meet the criteria established by the board, see below, or which are listed on the national register of historic places. Entry on the register requires nomination by the state historic preservation officer (SHPO) and owner notification in accordance with rules which the board adopts. The criteria for evaluation of potential Arizona register properties generally encompass the quality of significance in Arizona history, architecture,

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<sup>1</sup>Cross references—Buildings and building regulations, Ch. 8; Planning and development, Ch. 25.

State law reference—A.R.S. § 9-462.01

<sup>2</sup>*Arizona register of historic places* definition and criteria as published by Arizona state parks, state historic preservation office.

archeology, engineering and culture. Such qualities may be present in districts, sites, buildings, structures and objects that possess integrity of location, design, setting, materials, workmanship, feeling and association; and also:

- (1) Are associated with events that have made a significant contribution to the broad patterns of history;
- (2) Are associated with the lives of historically significant persons;
- (3) Are the embodiment of a distinctive characteristic(s) of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- (4) Have yielded, or may be likely to yield, information important in prehistory or history.

*Building* means any structure created to shelter any form of human activity, such as a house, church or hotel; may also refer to a related complex such as a courthouse and jail, or a house and barn.

*Certified Local Government (CLG)* means a federal program, the aim of which is to decentralize the national historic preservation program by assigning decision-making to the states and, ultimately, to local governments. Applications for certification are reviewed by the state historic preservation officer and must document, at a minimum, establishment of an historic preservation commission with specific membership and duties, adoption of an historic preservation ordinance and development of an historic preservation plan.

*Commission* means the historic preservation commission of Tempe.

*Compatibility* means a pleasing visual relationship between elements of a property, building, or structure, or among properties, buildings and structures, or with their surroundings. Aspects of compatibility may include, but are not limited to, proportion, rhythm, detail, texture, material, reflectance and architectural style.

*Contributing property* means a classification applied to an individual property within a designated historic district, signifying that the property contributes generally to the distinctive character of the district; or an archeological site.

*Demolition* means the act or process that destroys a designated property.

*Designated property* means any property which has been classified as a landmark, historic property or contributing property within an historic district.

*Distinctive character* means the distinguishing architectural and aesthetic characteristics of a landmark or historic property, or those generally found throughout an historic district, which fulfill the criteria for designation.

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*Historic district* means a designation, in the form of overlay zoning, applied to all properties within an area with defined boundaries, as a result of formal adoption by the city council, which express a distinctive character worthy of preservation. An historic district may also include or be composed of one or more archeological sites.

*Historic eligible* means a property which appears to meet the criteria for designation.

*Historic preservation officer (HPO)* means a city staff member appointed by the community development director to serve as secretary to the historic preservation commission, maintain the Tempe historic property register and otherwise perform such tasks and duties as assigned by this chapter.

*Historic preservation plan* means a document, formally adopted by the city council, containing goals and policies regarding historic preservation within the city.

*Historic property* means a designation, in the form of overlay zoning, applied to an individual property, as a result of formal adoption by the city council, which expresses a distinctive character worthy of preservation, or an archaeological site.

*Landmark* means a designation, in the form of overlay zoning, applied to an individual property, as a result of formal adoption by the city council, which has achieved significance within the past fifty (50) years and which expresses a distinctive character worthy of preservation and which otherwise fulfills or exceeds the criteria for designation as an historic property.

*National register of historic places*<sup>3</sup> means the national register of historic places as established by the Historic Sites Act of 1935 (16 U.S.C. § 461 et seq.) and expanded by the National Historic Preservation Act of 1966, (16 U.S.C. § 470 et seq.) as amended. It is the nation's official listing of prehistoric and historic properties worthy of preservation. It affords protection and recognition for districts, sites, buildings and structures significant in American history, architecture, archeology, engineering and culture. This significance can be at the local, state or national level. The national register serves both as a planning tool and as a means of identifying buildings, sites and districts that are of special significance to a community and worthy of preservation. The criteria for evaluation of potential national register properties generally encompass the quality of significance in American history, architecture, archaeology, engineering and culture. Such qualities may be present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling and association; and

- (1) That are associated with events that have made a significant contribution to the broad patterns of our history;
- (2) That are associated with the lives of persons significant in our past;

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<sup>3</sup>*National register of historic places* definition and criteria as published by Arizona state parks, state historic preservation office, and as found in the Code of Federal Regulations, Title 36, Part 60.

- (3) That embody the distinctive characteristics of a type, period or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- (4) That have yielded, or may be likely to yield, information important in prehistory or history.

*Noncontributing property* means a classification applied to an individual property located within a designated historic district, signifying that the property does not contribute to the distinctive character of the district. Such properties are subject only to the provisions of this chapter regarding new construction, including general landscape character, and only when the amount of new construction equals or exceeds twenty-five percent (25%) of the land area or building ground floor area of the property at the time of its identification as noncontributing.

*Ordinary maintenance and repair* means regular or usual care, upkeep or replacement of any part, or putting back together that which is deteriorated or broken, of an existing property, building or structure to effect the maintenance of a safe, sanitary and stable condition.

*Owner* means the legal ownership entity of an individual parcel or property, as recorded with Maricopa County. For purposes of this chapter, each such parcel or property shall be considered to have one owner.

*Parcel* means land identified as a separate lot for purposes of the subdivision and zoning regulations of the city and so recorded with Maricopa County.

*Preservation covenant* means a deed restriction, filed with Maricopa County, which limits the owner's use of a designated property in order to effect the preservation of the distinctive character of the property.

*Preservation easement* means the nonpossessory interest of a holder in real property, said property being a designated property, imposing limitations or obligations to preserve the distinctive character of that property, or a specified portion thereof.

*Property* means building(s), structures(s) or other improvements, or an archeological site, associated with a particular parcel or location.

*Secretary of the interior's standards for the treatment of historic properties* means standards developed and adopted, as amended, by the secretary of the interior of the United States to guide work funded by, or otherwise conducted under the auspices of, the federal government on historic properties and archeological sites. Guidelines are given for preservation, rehabilitation, restoration and reconstruction.

*Significant* means having aesthetic, architectural or historical qualities of critical importance to the consideration of a property, building or structure for classification as a designated property.

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*Structure* means anything built, constructed or erected, or any piece of work artificially built-up or composed of parts joined together in some definite manner, the existence of which requires a permanent or semi-permanent location on or in the ground, including, but not limited to: bridges, dams, walls, fences, gazebos, garages, advertising signs, communications towers, sculpture, monuments, recreational facilities and water distribution systems.

*Tempe historic property register* means a document listing all designated properties and districts in the city.

(Ord. No. 95.35, 11-9-95; Ord. No. 97.20, 4-10-97; Ord. No. 2000.25, 6-15-00; Ord. No. 2001.17, 7-26-01; Ord. No. 2005.18, 4-7-05; Ord. No. 2010.02, 2-4-10)

### **Sec. 14A-3. Historic preservation commission; historic preservation officer.**

(a) The Tempe historic preservation commission is hereby established. The commission shall act in an advisory capacity to the city council in all matters concerning historic preservation. The commission shall make recommendations to the development review commission regarding designation of landmarks, historic properties and historic districts. Other actions of the historic preservation commission, as set forth below, shall be subject to appeal to the city council, as described in § 14A-8 of this chapter.

(b) The commission shall consist of nine (9) members, meeting certain qualifications as set forth below, appointed by the mayor and approved by the city council.

- (1) All members shall be Tempe residents with a demonstrated interest in or knowledge of historic preservation; and
- (2) The commission shall be composed of four (4) at-large members and five (5) professionals, drawn from the following disciplines, with no more than two (2) such professionals from the same discipline: architecture, architectural history, archeology, historic preservation law, history, landscape architecture, planning, building construction, or other related field.

(c) Members shall serve a term of three (3) years, except that two (2) of the initial members shall, upon appointment, be designated to serve terms of two (2) years each. In addition, two (2) other initial members shall be designated to serve first terms of one year. Those subsequently appointed shall serve regular terms of three (3) years. Members may be reappointed, but shall serve not more than two (2) complete, consecutive terms. If a commission member accumulates three (3) consecutive unexcused absences, the matter will be referred to the mayor's office for resolution. Members of the commission shall serve voluntarily and without compensation.

(d) The Tempe history museum manager, or designee, shall serve ex-officio, with no vote, except as specified.

(e) Whenever a member is unable to attend or must decline participation due to a conflict of interest, that member shall give timely notice to the HPO or chair of the commission. In the event that a sufficient number of members are not available to constitute a

quorum, the HPO or the Tempe history museum manager or designee is authorized to act as a member on consent agenda items only, and only to the extent that this presence constitutes a quorum.

(f) Five (5) members shall constitute a quorum of the commission; the concurring vote of five (5) members shall be necessary for any action of the commission on any matter.

(g) Conflict of interest of commission members is governed by Arizona Revised Statutes, applicable judicial decisions and opinions of the city attorney.

(h) The commission shall elect, from within its own membership, a chair and vice-chair.

(i) The commission shall hold a minimum of four (4) public meetings/hearings per year. Special meetings may be called at the discretion of the commission chair or five (5) or more members of the commission. The minutes of its proceedings, indicating the vote of each member and records of its examinations and other official actions shall be kept and filed in the offices of the community development department and the city clerk as part of the public record.

(j) The commission shall adopt rules of procedure consistent with the provisions of this chapter for the performance of its duties.

(k) Commission duties and activities shall include the following:

- (1) Reviewing applications for the designation of landmarks, historic properties and historic districts and making recommendations to the development review commission, such review shall be based on the criteria as specified in § 14A-4 of this chapter;
- (2) Reviewing and making decisions on applications for proposed alterations, new construction, demolition or removal affecting landmarks, historic properties or properties located within an historic district; such review shall be based on the criteria as specified in § 14A-6 of this chapter;
- (3) Making recommendations to the city council concerning the use of federal, state, city or available private funds to promote the preservation of properties and districts within the city, including acquisition, the awarding of such sub-grants as may become available and the requiring of preservation covenants, as well as the acquisition of preservation easements;
- (4) Recommending to the city council and other applicable boards and commissions, changes in the Zoning and Development Code, building code, general plan or other local laws as may enhance the purposes of this chapter;
- (5) Cooperating with representatives designated by the property owners of the district from designated historic districts to formulate design guidelines for alterations and new construction within their districts;

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- (6) Initiating and conducting detailed studies and surveys of properties, structures and areas within the city and assess their potential for designation, and in order to formulate an historic preservation plan for the city; and
- (7) Developing and participating in public information activities in order to increase public awareness of the value of historic preservation, and perform other functions that will encourage or further the interests of historic preservation.

(1) The Tempe historic preservation officer (HPO) is hereby established. The HPO shall be appointed by the director of the community development department, have a demonstrated interest in historic preservation and be a qualified professional in one or more pertinent fields such as archeology, architecture, cultural geography, landscape architecture or planning. The duties of the HPO shall include:

- (1) Serving as secretary to the historic preservation commission, facilitating its efforts and, with other city staff as necessary, providing administrative support;
- (2) Accepting applications for designations and proposed alterations, new construction, demolition or removal;
- (3) Acting as intermediary between the commission and other city regulatory functions;
- (4) Providing technical and background information to the commission and public, as required;
- (5) Approving proposed alterations, new construction, demolition or removal affecting landmarks, historic properties and properties within historic districts, in the instance of such work being obviously minor in nature and impact, or in cases of imminent public hazard, and reporting such approvals to the commission;
- (6) Preparing annual written reports of commission activities that are submitted to the state historic preservation officer (SHPO) and made available to the public. The reports shall contain, at a minimum, minutes of meetings, decisions made, special projects and activities, the number and type of cases reviewed, current resumes of commission members and member attendance records; and
- (7) Maintaining the Tempe historic property register and lists of historic eligible and archeologically sensitive properties.

(Ord. No. 95.35, 11-9-95; Ord. No. 97.20, 4-10-97; Ord. No. 2000.25, 6-15-00; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.42, 1-20-05; Ord. No. 2005.18, 4-7-05; Ord. No. 2006.01, 1-5-06; Ord. No. 2010.02, 2-4-10; Ord. No. O2014.22, 6-12-14; Ord. No. O2014.36, 9-4-14)

**Sec. 14A-4. Designation of landmarks, historic properties and historic districts.**

(a) The following criteria are established for designation of an individual property, building, structure or archeological site:

- (1) It meets the criteria for listing on the Arizona or national register of historic places;
- (2) It is found to be of exceptional significance and expresses a distinctive character, resulting from:
  - a. A significant portion of it is at least fifty (50) years old; is reflective of the city's cultural, social, political or economic past; and is associated with a person or event significant in local, state or national history; or
  - b. It represents an established and familiar visual feature of an area of the city, due to a prominent location or singular physical feature; or
- (3) If it has achieved significance within the past fifty (50) years, it shall be considered eligible for designation as a landmark if it is an integral and critical part of an historic district or demonstrates exceptional individual importance by otherwise meeting or exceeding the criteria specified in paragraphs (1) or (2) of this subsection above. At such time as a landmark becomes fifty (50) years old, it will automatically be reclassified as an historic property.

(b) The following criteria are established for designation of an historic district:

- (1) The district consists of an area in which are located a substantial concentration of properties, buildings or structures which individually meet the criteria in subsection (a) of this section above, as well as others which contribute generally to the overall distinctive character of the area, and are united historically or visually by plan or physical development; district boundaries coincide with documented historic boundaries such as early roadways, canals, subdivision plats or property lines; other district boundaries coincide with logical physical or man-made features and reflect recognized neighborhood or area boundaries; and other noncontributing properties or vacant parcels are included where necessary to create appropriate boundaries; or
- (2) A district may also include or be composed of one or more archeological sites.

(c) The designation process is as follows:

- (1) Application for the designation of a landmark, historic property or historic district shall be made by the owner of such real property, or of property located within the boundaries of such proposed district, situated in the city, or by any officer, department, board, commission or the city council, with the HPO at the community development department, on such form(s) and accompanied by such fee(s) as may be adopted;



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- (2) Any such application for designation, as described in paragraph (1) of this subsection above, shall also be accompanied by:
  - a. A vicinity ownership map showing all parcels in the vicinity adjacent to, including and surrounding the proposed designated property or district, within a radius of three hundred (300) feet from the external boundaries of the property or district; each such parcel shall be designated by a number to correspond with the ownership/tenant list described in subparagraph b. of this paragraph below;
  - b. A typed or legibly printed list containing names and mailing addresses, including zip codes, of owners of parcels as described in subparagraph a. of this paragraph above, and identified by the same number as on the vicinity ownership map, and the names and addresses, including zip codes, of any tenants associated with the described parcels;
  - c. An accurate legal description or parcel number(s) as recorded with Maricopa County, of the proposed designated property or properties within the proposed historic district; and
  - d. A written description of the proposed designated property or historic district, addressing the pertinent criteria, as described in subsections (a) and (b) of this section;
- (3) The HPO shall then place the request on the next available agenda of the commission for a public hearing. Upon request by the applicant, a special meeting may be called at the discretion of the chair of the commission, or by five (5) or more commission members;
- (4) Upon receipt of an application and placement on the next available commission agenda, the HPO shall compile and transmit to the commission a complete report on the subject property or district. This report shall address the location, condition, age, significance and integrity of historic features and identify potential contributing and noncontributing properties and other relevant information, together with a recommendation to grant or deny the application and the reasons for the recommendation;
- (5) At a public hearing, the commission shall review the application based on the applicable criteria in subsections (a) and (b) of this section, together with the HPO report, and make a recommendation to the development review commission. Any recommendation for approval may be subject to such conditions as the historic preservation commission deems applicable in order to fully carry out the provisions and intent of this chapter;
- (6) Once forwarded to the development review commission, a public hearing shall be set and conducted according to the applicable procedures for amendment, as described in Section 6-304 of the Zoning and Development Code;

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- (7) After such public hearing, the development review commission shall make a report and recommendation to city council. The city council shall then set a public hearing on the application in accordance with subsection (e) of this section; and
  - (8) The recommendation of approval of any designation by the historic preservation commission shall be void if the designation has not been adopted by the city council within one year of the commission's action.
- (d) Notification of public hearings is established as follows:
- (1) For a designation request, the community development department shall deposit in the U.S. mail, not less than fifteen (15) calendar days prior to the date of each public hearing of the historic preservation commission, a notice of the date, time and place of the hearing, and a summary of the request, to each affected property owner and tenant, per a list provided by the applicant. Final delivery of such notices shall not be the responsibility of the city. Notice shall be given as follows:
    - a. For a landmark or historic property request, "affected property owners and tenants" shall be those within three hundred (300) feet of the subject property; or
    - b. For an historic district request, "affected property owners and tenants" shall be those within the boundaries of the proposed district and within three hundred (300) feet external to those boundaries;
  - (2) The community development department shall erect, not less than fifteen (15) calendar days prior to the date of the public hearing, a notice, visible from a public way and clearly legible, of the date, time and place of the hearing, and a summary of the request. It shall not be the responsibility of the city to maintain the notice after it has been placed. Notice shall be given as follows:
    - a. For a landmark or historic property request, such notice shall, wherever possible, be placed adjacent to the subject property in the right-of-way of a public street or road; or
    - b. For an historic district, such notice shall, wherever possible, be placed at no fewer than four (4) conspicuous locations within the district and at its external boundaries;
  - (3) The community development department shall submit the request for publication in the official newspaper at least once, no fewer than fifteen (15) days prior to the public hearing of the commission; and
  - (4) Notification pertaining to a proposed text amendment to this chapter shall comply with paragraph (3) of this subsection above, only.

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(e) The city council will, upon receipt of an application and accompanying decision and report from the development review commission, hold a public hearing to consider the application. Notification for such hearing shall be as specified in subsection (d) of this section above. At the public hearing, the city council may do one of the following:

- (1) Adopt the request per the recommendation of the development review commission;
- (2) Modify the recommendations and adopt the request as modified;
- (3) Deny the request; or
- (4) Remand the request to the development review commission for further proceedings.

(f) If the owners of twenty percent (20%) or more either of the area of the parcels included in a proposed historic district, or of those immediately adjacent in the rear or any side thereof extending one hundred fifty (150) feet therefrom, or of those directly opposite thereto extending one hundred fifty (150) feet from the street frontage of the opposite parcels, file a protest in writing against a proposed designation, it shall not become effective except by the favorable vote of three-fourths (3/4) of all members of the city council. Such protest shall be filed with the city clerk prior to or at the time of the public hearing of the council. If any members of the city council are unable to vote on such a question because of a conflict of interest, then the required number of favorable votes for passage of the question shall be three-fourths (3/4) of the remaining membership of the council, provided that such required number of votes shall in no event be less than a majority of the full membership of the council.

(g) The effects of designation are as follows:

- (1) If adopted by the city council, a landmark, historic property or historic district shall be designated by the application of the corresponding overlay zoning district and referenced by the "H" symbol on a map of the city, to be issued by the community development department;
- (2) Any uses permitted by the existing, underlying zoning classifications which apply to a landmark, historic property or historic district, shall be permitted. Such designated properties and districts are subject to the provisions of this chapter, as well as to applicable provisions of the Zoning and Development Code and the general plan; and
- (3) Subsequent to designation of an historic district, the historic preservation commission shall, in cooperation with representatives from the district, and in order to preserve and enhance the distinctive character of the district, adopt design guidelines which shall apply only to the exterior features and general character of contributing properties and alterations thereto, as well as any other new construction within the district as follows:

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- a. District design guidelines will address general aspects such as building materials, massing, scale and proportion of openings and other features, orientation and relative position of buildings and landscape character; as well as specific aspects such as roof forms, textures, color theme, character of signage, window and door types, and other details relative to architectural styles evident in the district;
- b. District design guidelines will not regulate maximum building height, maximum lot coverage, minimum setbacks, required landscaping, required parking, allowable signs or other provisions of the Zoning and Development Code; and
- c. Following designation of an historic district, and until such time as district-specific design guidelines can be adopted, the commission shall refer to such professional or commonly recognized standards as may be appropriate and available.

(h) The procedure to remove landmark, historic property or historic district designation and corresponding overlay zoning shall be the same as the procedure to designate, as specified in subsections (c), (d), (e) and (f) of this section.

(i) No landmark, historic property or historic district, having been nominated for designation, or removal of designation, shall be renominated within one year from the date of previous nomination.

(j) The procedure and effects of classification of a property as historic eligible shall be as follows:

- (1) The HPO shall prepare a list of proposed properties, with applicable supporting information, for consideration by the commission and schedule a public hearing; notification of such hearing is established as follows:
  - a. The community development department shall deposit in the U.S. mail, not less than fifteen (15) calendar days prior to the date of the public hearing of the commission, a notice of the date, time and place of the hearing, and a summary of the proposed action, to each affected property owner, per currently available ownership information. Final delivery of such notices shall not be the responsibility of the city; and
  - b. The community development department shall submit the notice for publication in the official newspaper at least once, no fewer than fifteen (15) calendar days prior to the public hearing of the commission;
- (2) At a public hearing, the commission shall review the proposed properties and assess their potential to meet the applicable criteria for designation, as described in subsection (a) of this section; and

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- (3) Upon approval by the commission, any properties classified as historic eligible shall be identified as such in the records of the community development department and subject to the requirements described in § 14A-6(f) and § 14A-7(j) of this chapter.

(k) The procedure and effects of classification of a property as archeologically sensitive shall be as follows:

- (1) The HPO shall prepare a list of proposed properties, with applicable supporting information, for consideration by the commission at a regularly scheduled public meeting; and
- (2) Upon approval by the commission, any properties classified as archeologically sensitive shall be identified as such in the records of the community development department and subject to the requirements described in § 14A-6(g) and § 14A-7(k) of this chapter.

(Ord. No. 95.35, 11-9-95; Ord. No. 97.20, 4-10-97; Ord. No. 2000.25, 6-15-00; Ord. No. 2004.42, 1-20-05; Ord. No. 2005.18, 4-7-05; Ord. No. 2006.01, 1-5-06; Ord. No. O2014.22, 6-12-14)

### **Sec. 14A-5. Historic property register.**

(a) The Tempe historic property register is hereby established for the purpose of listing the landmarks, historic properties and historic districts, as designated under the provisions of this chapter. This register, as may be amended from time to time, shall serve as the official record of all such designations and shall be maintained by the HPO and available for public reference at the community development department and the city clerk.

(b) Supplemental to the historic property register shall be the lists of properties classified as historic eligible and archeologically sensitive. These lists, as may be amended from time to time, shall be maintained by the HPO and available for public reference at the community development department and the city clerk.

(Ord. No. 95.35, 11-9-95; Ord. No. 97.20, 4-10-97; Ord. No. 2000.25, 6-15-00; Ord. No. 2005.18, 4-7-05)

### **Sec. 14A-6. Guidelines, standards and process for review of alteration or new construction.**

(a) When a building permit or other permit or approval is sought from the city to alter, remodel, build or otherwise develop or landscape property designated as a landmark, historic property, or that is located within a designated historic district, issuance of the permit or approval shall be deferred until after approval has been obtained from the historic preservation commission, or in the cases of work obviously minor in nature or of no effect to the property or district, the HPO. The issuance of such approval indicates conformance with the provisions and intent of this chapter only and does not imply approval by other city regulatory agencies.

(b) Review by the commission of a request for approval of proposed alteration or new construction shall require submittal to the HPO of:

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- (1) An application, on such form(s) and accompanied by such fee(s) as may be adopted;
- (2) Photographs of the existing property;
- (3) Drawings, to approximate scale, of the site plan, floor plan(s) and elevations of the proposed work, indicating materials and color scheme;
- (4) If signage is part of the proposed work, drawings, to approximate scale, showing the size and location of proposed signage, type of lettering to be used and indication of color and type of illumination, if any; and
- (5) Any other information which the applicant or the commission may reasonably deem necessary to review the proposed work.

(c) The commission shall consider the request at its next available regularly scheduled or special public meeting. Approval or denial shall be based on the following criteria:

- (1) Proposed work on any portion of a landmark or historic property shall be compatible with the recognized distinctive character of the overall property;
- (2) Proposed work on any portion of a contributing property within an historic district shall be compatible with the recognized distinctive character of the property itself, as well as with that of the overall district, as determined by conformance with adopted design guidelines of the district;
- (3) Proposed new work within an historic district shall be compatible with the recognized distinctive character of the district, as determined by conformance with adopted design guidelines of the district; and
- (4) If federal funds, in the form of grants, tax incentives or other programs, are employed, directly or indirectly, in financing proposed work, the secretary of the interior's standards for the treatment of historic properties shall be applicable, in addition to the criteria specified in paragraphs (1) through (3) of this subsection above.

(d) The commission shall act to approve, deny, conditionally approve or continue an application at the public meeting at which it is initially reviewed. The HPO shall issue and record a notice of approval or denial and specify the reasons for, and any conditions of, the commission's action.

(e) Approval of an application by the commission or HPO shall be valid for a period of one year from the date of approval.

(f) When a permit or other approval is sought from the city to alter, remodel, build or otherwise develop or landscape property classified as historic eligible, issuance of the permit or approval shall be subject to clearance by the HPO. Such clearance shall be issued within thirty (30) calendar days from the date of application, during which time the HPO will assess potential

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adverse impact, suggest alternatives, and may consult with the commission and city council. If, by the end of the thirty (30) day period, no clearance has been issued or no alternative, agreeable to the applicant, has been suggested, the original request shall be granted, provided all other applicable requirements have been met.

(g) When a permit or other approval is sought from the city to alter, remodel, build or otherwise develop or landscape property classified as archeologically sensitive, the applicant shall be advised as to the status of the property, potentially applicable state and federal requirements, and suggested course(s) of action. In the case of city-owned property or right-of-way, applicable state and federal requirements shall determine the appropriate course of action. (Ord. No. 95.35, 11-9-95; Ord. No. 2000.25, 6-15-00)

### **Sec. 14A-7. Demolition and removal.**

(a) When a permit or other approval is sought from the city to demolish or remove a designated property, issuance of the permit or approval shall be deferred until after approval has been obtained from the historic preservation commission, or in the cases of work obviously minor in nature or involving an imminent hazard to public safety, the HPO. The issuance of such approval indicates conformance with the provisions and intent of this chapter only and does not imply approval by other city regulatory agencies.

(b) Review by the commission of a request for approval of proposed demolition or removal shall require submittal to the HPO of:

- (1) An application, on such form(s) and accompanied by such fee(s) as may be adopted;
- (2) Photographs of the existing property;
- (3) A preliminary plan of redevelopment for the parcel indicating an intended use that is in compliance with the general plan and existing or proposed zoning and other applicable regulations, as well as with §14A-6 of this chapter;
- (4) If economic relief is requested, supporting documentation necessary to demonstrate applicability of the standards as described in subsection (d) of this section; and
- (5) Any other information which the applicant or the commission may reasonably deem necessary to review the request.

(c) The commission shall consider the request at its next regularly scheduled or special public meeting. Approval or denial shall be based on the following criteria:

- (1) The property which is proposed for demolition or removal is of no historic or architectural value or significance and does not contribute to the distinctive character of the property;

- (2) Loss of the property would not adversely affect the integrity, nor diminish the distinctive character of an historic district; and
- (3) If economic relief is requested, applicability of the standards as described in subsection (d) of this section below.

(d) An application for demolition may be accompanied by a request for economic hardship relief. Separate standards for granting economic hardship relief to allow demolition or removal of a designated property are hereby established for investment or income producing properties, and for non-income producing properties. Non-income producing properties shall consist of owner-occupied single-family dwellings and non-income producing institutional properties. Economic hardship relief shall be granted as follows:

- (1) In regard to an income producing property, when the applicant demonstrates that a reasonable rate of return cannot be obtained from a property which retains features which contribute to its distinctive character in its present condition or if rehabilitated, either by the current owner or a potential buyer; or
- (2) In regard to a non-income producing property, when the applicant demonstrates that the property has no reasonable use as a single-family dwelling or for an institutional use in its present condition, or if rehabilitated, either by the current owner or a potential buyer.

(e) Economic hardship relief shall not be granted due to any of the following circumstances:

- (1) Willfully destructive acts by the owner;
- (2) Purchase of the property for substantially more than the market value;
- (3) Failure to perform ordinary maintenance and repair; or
- (4) Failure to diligently solicit and retain tenants or provide normal tenant improvements.

(f) The commission shall act to approve, deny, conditionally approve or continue an application at the public meeting at which it is initially reviewed. The HPO shall issue and record a notice of decision and specify the reasons for, and any conditions of, the commission's action.

(g) Approval of an application by the commission or HPO shall be valid for a period of one year from the date of approval.

(h) If a request for a proposed demolition or removal is denied by the commission, no demolition or removal will be permitted for a period of no more than one hundred eighty (180) days from the date on which the request was denied. During the period of restraint of demolition or removal, the commission and HPO will attempt to secure whatever assistance as may be feasible to effect the preservation of the property, such as economic assistance, acquisition, purchase of a preservation easement, or location of a buyer who, upon purchase at terms



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agreeable to the owner, will enter into a preservation covenant with the city for period of at least five (5) years. If the commission or HPO is unable to secure such assistance within the period of restraint, the proposed demolition or removal will be allowed, subject to the issuance of the appropriate permit by the building official of Tempe.

(i) If the building official finds that a designated property is an imminent hazard to public safety and, together with the HPO, determines that repairs or relocation would not be appropriate or feasible, the HPO shall approve the necessary demolition or removal, subject to issuance of the appropriate permit by the building official.

(j) When a permit or other approval is sought from the city to demolish or remove a property classified as historic eligible, issuance of the permit or approval shall be subject to clearance by the HPO. Such clearance shall be issued within thirty (30) calendar days from the date of application, during which time the HPO will assess adverse impact, suggest alternatives, and may consult with the commission and city council. If, by the end of the thirty (30) day period, no clearance has been issued or no alternative, agreeable to the applicant, has been suggested, the original request shall be granted, provided all other applicable requirements have been met.

(k) When a permit or other approval is sought from the city to demolish or remove a property classified as archeologically sensitive, the applicant shall be advised as to the status of the property, potentially applicable state and federal requirements, and suggested course(s) of action. In the case of city-owned property or right-of-way, applicable state and federal requirements shall determine the appropriate course of action.  
(Ord. No. 95.35, 11-9-95; Ord. No. 97.20, 4-10-97; Ord. No. 2000.25, 6-15-00)

### **Sec. 14A-8. Appeal.**

(a) The applicant for approval of proposed alteration, new construction, demolition or removal, or designation, or classification as historic eligible, or the owner of any such property, or the community development director, or any member of the city council, may appeal any decision of the historic preservation commission to the city council by filing written notice of appeal and any applicable fee, as may be adopted, with the city clerk within ten (10) working days of the date of the commission's action, in accordance with Rule 6 of Arizona Rules of Civil Procedure of the State of Arizona.

(b) Notice of an appeal and the date set for its review by the city council shall be published at least once, not less than seven (7) days prior to the council meeting at which such appeal is to be heard.

(c) The city clerk shall set the date for a public hearing of the appeal by the council within thirty (30) days of the filing of the appeal.  
(Ord. No. 95.35, 11-9-95; Ord. No. 97.20, 4-10-97; Ord. No. 2000.25, 6-15-00; Ord. No. 2001.17, 7-26-01; Ord. No. 2005.18, 4-7-05; Ord. No. 2010.02, 2-4-10)

### **Sec. 14A-9. Maintenance and repair.**

(a) Ordinary maintenance and repair of a designated property shall be performed by the owner and shall not require specific approval from the HPO or commission, provided that such

maintenance or repair does not significantly alter the features which contribute to the distinctive character of such a designated property.

(b) The owner of a designated property shall not permit the property to fall into a state of disrepair so as to result in the deterioration of any significant exterior feature which would have a detrimental effect on the distinctive character of the property itself or, that of the overall district, if located within an historic district.

(c) The condition of the property at the time of its designation shall be the standard of reference for the evaluation of future deterioration.

(d) Examples of deterioration which shall be prevented by the owner of the designated property by means of ordinary maintenance and repair shall include, but not be limited to the following:

- (1) Excessive erosion, reverse drainage and other preventable site conditions which may adversely affect significant buildings and structures;
- (2) Loss of structural integrity due to deterioration of footings, load-bearing walls or columns, beams, trusses or other support members;
- (3) Weathering or damage to exterior elements such as wall and roof surfaces, chimneys, balustrades, doors, windows and other architectural features;
- (4) Loss of weather-tightness or security due to any of the above; or
- (5) Deterioration of any feature so as to create a hazardous condition which could lead to the claim that demolition is necessary as a matter of public safety.

(e) In order to prevent demolition by neglect, resulting from deterioration as described in subsection (d) of this section above, the city may effect repairs to a landmark, historic property or contributing property within an historic district and treat the cost of such repairs as a lien against the property.

(f) Enforcement of this section shall be the responsibility of the city manager or designee. (Ord. No. 95.35, 11-9-95)

#### **Sec. 14A-10. Incentives.**

It is the intent of the city to make ownership of a landmark, historic property or property within an historic district as beneficial as possible. In addition to the intangible benefits of owning a property recognized as an important community resource, the HPO or commission may, when applicable and possible, provide such owners with the following:

- (1) Assistance in locating potential sources of financial assistance and tax credits;
- (2) Assistance in preparing grant applications and potential third party sponsorship;
- (3) Technical information and referrals;

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- (4) Assistance in locating buyers or sellers;
- (5) Assistance, through the neighborhood programs office, in the formulation and operation of a neighborhood association; and
- (6) Assistance in obtaining other benefits as may become available through the city or other sources.

(Ord. No. 95.35, 11-9-95)

### **Sec. 14A-11. Violations.**

(a) Any person who constructs, alters, neglects, demolishes or removes a property or portion thereof in violation of the provisions of this chapter may be required to restore the property to its appearance prior to the violation.

(b) Enforcement of this section shall be the responsibility of the city manager or designee. Any resulting action regarding a violation of any provision of this chapter shall be brought by the city attorney. The civil remedy shall be in addition to, and not in lieu of, any criminal prosecution and penalty.

(c) Any person found to be in violation of any provision of this chapter shall be guilty of a misdemeanor, punishable in accordance with § 1-7 of this code.

(Ord. No. 95.35, 11-9-95)